

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p>Plaintiff,</p> <p>v.</p> <p>IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,</p> <p>Respondent.</p>	<p>Case No. CVCV065011</p> <p><b>MOTION TO LIMIT SCOPE OF CERTIFIED RECORD</b></p>
---	--

**COMES NOW**, Intervenor, Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, by and through its undersigned counsel, and submits this Motion to Limit Scope of Certified Record. In support of its motion, OCA states as follows:

**PROCEDURAL HISTORY**

1. On November 2, 2021, Petitioner, Interstate Power and Light Company (IPL), filed with Respondent, Iowa Utilities Board (Board), an application for advance ratemaking principles. The Board identified the application as Docket No. RPU-2021-0003.
2. On November 9, 2022, the Board issued an order denying the application.
3. On November 29, 2022, IPL filed with the Board a request for reconsideration or rehearing.
4. On December 29, 2022, the Board issued an order granting rehearing with respect to the proposed 50-megawatt Duane Arnold Solar 1 facility and the 150-megawatt Duane Arnold Solar II facility. The order required IPL to file certain additional information to aid in the Board's rehearing of those portions of IPL's application. The order denied reconsideration or

rehearing with respect to the proposed 75-megawatt battery energy storage system (BESS) and with respect to 200 MW of additional proposed facilities whose location had not been finalized.

5. On January 30, 2023, IPL filed with the Board additional information in response to the Board's December 29, 2022 order. On the same day, IPL filed with this court a petition for judicial review of the Board's November 9 and December 29, 2022 orders.

6. On February 7, 2023, Iowa Business Energy Coalition and Large Energy Group, each a party in Docket No. RPU-2021-0003, filed with the Board a joint motion to strike IPL's January 30, 2023 additional information from the record. The joint motion argued that IPL had inappropriately included in its filing information with respect to the 75-megawatt BESS and the 200-megawatt project, for which the Board had not granted reconsideration or rehearing.

7. On February 8, 2023, Intervenor OCA filed with the Board an objection to IPL's January 30, 2023 additional information on substantially similar grounds as the joint motion to strike filed with the Board the previous day.

8. On February 13, 2023, IPL filed with the Board a response to the joint motion to strike and to OCA's objection.

9. On February 21, 2023, the Board issued an order staying the rehearing proceeding in Docket No. RPU-2021-0003, and any outstanding motions or pleadings, pending a decision in this court.

10. On February 24, 2023, IPL filed with this court an amended petition for judicial review.

11. On February 28, 2023, the Board filed a pre-answer motion to dismiss.

12. On March 17, 2023, the Board, IPL, and OCA appeared before this court for a hearing on the Board's motion to dismiss.

13. At the March 17, 2023 hearing, the Board explained that it is seeking direction from the Court with respect to three questions, one of which is: If judicial review of the 200 MW project and the BESS is to proceed immediately, what constitutes the certified record that the Board must transmit to the court? (Case No. CVCV06511, “Ruling on Motion to Dismiss and Motion to Enlarge Time to Transmit Certified Record,” p. 2, March 23, 2023.)

14. On March 23, 2023, the Court issued an order that denied the Board’s motion to dismiss and directed the Board to submit the certified record within 14 days. The Court directed that the certified record “shall consist of, at minimum, all filings up to and including the stay order entered by the Board on or about February 21, 2023.” (*Id.*, p. 4.)

### **ARGUMENT**

15. OCA respectfully moves that the Court modify its March 23, 2023 order and direct that the certified record shall consist of all filings up to and including the Board’s *December 29, 2022* order that granted in part and denied in part IPL’s request for reconsideration. In particular, the additional information IPL filed with the Board on January 30, 2023, should not be included in the certified record for this case.

16. The additional information IPL filed with the Board on January 30, 2023, contains testimony and exhibits that are subject to an outstanding objection from OCA and a motion to strike by the other parties to the underlying docket. OCA and the other parties have not had an opportunity to cross-examine this testimony at hearing, or even to file a response with the Board due to the Board’s February 21, 2023 stay order. To date, the Board has not admitted the information into the record.

17. Most importantly, though, the January 30, 2023 information was not before the Board at the time it issued the November 9 and December 29, 2022 orders under review in this

proceeding. Iowa Code § 17A.19(7) provides, in part, “In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by the Constitution or a statute to the agency in that contested case proceeding.” OCA believes it would be inappropriate for the Court to base its decision in this case on information that was not before the agency at the time of the agency’s decision.

18. OCA has conferred with counsel for the Board and is authorized to state that the Board agrees the certified record should be limited to filings in the docket up to and including December 29, 2022, which is the date the Board issued its order addressing IPL’s motion for reconsideration or rehearing. OCA has also conferred with counsel for Iowa Utility Association (IUA) and is authorized to state that IUA does not oppose limiting the record to December 29, 2022.

**WHEREFORE**, OCA respectfully requests that the Court limit the scope of the certified record for this proceeding to filings made in the agency docket on or before December 29, 2022.

Respectfully submitted,

/s/ Craig F. Graziano  
Craig F. Graziano, AT0002935  
Acting Consumer Advocate

/s/ John Crotty  
John Crotty, AT0011526  
Attorney

OFFICE OF CONSUMER ADVOCATE  
1375 East Court Avenue  
Des Moines, Iowa 50319-0063  
Telephone: (515) 725-7200  
E-mail: [Craig.Graziano@oca.iowa.gov](mailto:Craig.Graziano@oca.iowa.gov)  
E-mail: [John.Crotty@oca.iowa.gov](mailto:John.Crotty@oca.iowa.gov)

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2023, the foregoing document was filed with the Clerk of Court using the EDMS system which will send electronic notice of the filing to the parties of record. Further, I certify the foregoing document was sent to the Iowa Utilities Board's general counsel through electronic mail.

/s/ John Crotty

John Crotty